

10th September 1946]

III.—GOVERNMENT BILL.

THE MADRAS DISTRICT MUNICIPALITIES AND LOCAL BOARDS (SECOND AMENDMENT) BILL, 1946

* MR. PRESIDENT :—“ Discussion will now proceed on the Madras District Municipalities and Local Boards (Second amendment) Bill, 1946.”

* THE HON. MR. DANIEL THOMAS :—“ Mr. President, Sir, you may be pleased to put the Bill clause by clause to the House and any amendments which have to be moved with reference to any particular clause may be taken up and discussed under each clause, under rule 92 of the Council Rules.”

Clause 2.

* MR. PRESIDENT :—“ I have received notice of an amendment from the hon. Dr. V. K. John for clause 2. He will now move it.”

* DR. V. K. JOHN :—“ Sir, I move the following amendment standing in my name, viz.—

‘ Clause 2 shall be amended as follows :—

“ The provisions of section 4 (1) (a) or section 8 (1) (a) of the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942, are hereby repealed to the extent they provide for reconstitution of superseded or dissolved municipal councils or district boards by nomination. All the members of such municipal councils or district boards when reconstituted shall be elected.” ’

“ The clause as it stands in the Bill runs as follows :—

‘ Where any municipal council or district board has been superseded or dissolved and has not been reconstituted before the commencement of this Act, or where any municipal council or district board is superseded or dissolved after the commencement of this Act, the provisions of section 4 (1) (a) or section 8 (1) (a), as the case may be, of the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942 (hereinafter referred to as the said Act), shall not apply to the reconstitution of such municipal council or district board and all the members of such municipal council or district board, when it is reconstituted, shall be elected.’

“ My reason for this amendment is that a proper form of enactment has to repeal the former statutes and not merely say that the provision of such and such section shall not apply to the reconstitution of the local body.

“ Sir, it is only a matter of form not so much a matter of substance. Courts of law have again and again criticised legislation which repeals enactments repealing previous statutes by implication and not directly by a statement that these are being repealed. In almost every statute where there is any repealing of previous statutes, you will find a schedule indicating the acts repealed. I am suggesting this for the purpose of showing, if the Hon. Minister will agree, that the form may be accepted. If that is not accepted in the present case, I hope he will at any rate do

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it hereafter. In very many Bills which repeal previous enactments, I think it is much better, safer, clearer and much more in form and in order to say that a previous enactment is repealed either in whole or in part. If you will allow me, Sir, I do not want to move my first amendment. I may remind the House that the expression used in section 2 'after the commencement of this Act,' but you do not find anywhere when the Act commences. In all the Bills introduced, it is usual to say 'It shall come into force at once' but since there is nothing to indicate this, I move my amendment, namely :—

Clause 2 shall be amended as follows :—

"The provisions of section 4 (1) (a) or section 8 (1) (a) of the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942, are hereby repealed to the extent they provide for reconstitution of superseded or dissolved municipal councils or district boards by nomination. All the members of such municipal councils or district boards when reconstituted shall be elected." "

* SRI K. O. ANTHONI :—"I second it, Sir."

* THE HON. MR. DANIEL THOMAS :—"I oppose the amendment proposed by my hon. Friend. In the first place, I would like to point out to the House that if the amendment is carried through, this Bill requires to be sent down again for the consideration of the Assembly. I do not say that the procedure is wrong. But what I would submit to the House is that only in essential matters, in matters where some necessary modification has to be made in the substance of the Bill would it be advisable to pass such an amendment. So far as this proposal is concerned, I am afraid, this is merely putting something in another form. Certainly if my hon. Friend had given his form before the drafting stage of the Bill, we would have taken advantage of it. As it stands, clause 2 is not at all ambiguous; it is more explicit than what the hon. Member put up as an amendment. For example, this clause 2 makes it clear that the provisions of this clause shall apply to all cases where municipal councils or district boards are superseded or dissolved before the commencement of this Act and not reconstituted and it also applies to cases of district boards or municipal councils to be superseded hereafter. My hon. Friend is not able to point out in what substantial sense or feature of this clause, there is *leccuna* as it stands drafted. Of course it is open to any one to paraphrase; you all know the well-known exercises in composition in our college days where a passage can be paraphrased in different forms. So long as there is no substantial change or ambiguity in the clause as it stands, there is no necessity to accept the amendment proposed by my hon. Friend.

"As regards the date, my hon. Friend pointed out that this Act does not mention on which date this Act comes into force. May I invite the attention of my hon. Friend to clause 5 of the

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Madras General Clauses Act which provides that whenever there is no specific date mentioned in any particular Act, that Act comes into force on the date on which it receives the assent of His Excellency the Governor. It is also published in the *Fort. St. George Gazette* that it has received the assent of the Governor and it is notified that it becomes part of the Act. Therefore, there is no difficulty about the date of commencement of the Act. I therefore object to the amendment and I would ask my hon. Friend to withdraw it."

* SRI R. SURYANARAYANA RAO :—" Sir, I have a few remarks to offer. The fact that if any amendment is carried in this House, it is necessary that it should be reconsidered by the Assembly, need not be mentioned by the Hon. Minister. I wish he had not mentioned that fact. This House has every right, if the drafting suggested by my hon. Friend Dr. John is correct, it has every right to improve the Bill. Otherwise it will have the seal of approval of a badly drafted form."

* MR. PRESIDENT :—" The hon. Member is perfectly right."

* DR. V. K. JOHN :—" In view of the assurance given by the Hon. Minister in his speech and for the reason that it is not so much a matter of substance—though I do not think he is right in saying that the amendment could have been suggested beforehand—I withdraw the amendment."

The amendment was by leave of the House withdrawn.
Clause 2 was put and carried.

Clause 3.

* MR. PRESIDENT :—" Two hon. Members have given notice of amendments to this clause, one is by the hon. Member Dr. John and the other is by the hon. Mr. Narayanaswami Nayudu. I request both the hon. Members to move their amendments so that the discussion can go on simultaneously on both the amendments."

* DR. V. K. JOHN :—" I move the amendment that stands in my name, namely :—

Clause 3 shall be amended as follows :—

"The Government shall have power to prescribe the manner and the dates of such elections and shall also have the power to appoint any person as a Special Officer for such a district board to exercise and discharge, before the newly elected members assume office, the powers and duties of the district board and its president and such other powers and duties which the Government may prescribe. The Government shall also have power to order the payment to him from the District Fund, such remuneration as the Government may fix."

"In this connexion, Sir, I wish to read out section 3 of the Bill as it stands :

'3: (1) Where elections have to be held for the first time after the commencement of this Act to fill vacancies in the office of the members of any district board whose term of office has been fixed under section 7 or section 8 (1) (c) of the said Act, then, notwithstanding anything

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contained in the Madras Local Boards Act, 1920, and in section 11 (a) of the said Act, it shall be lawful for the Provincial Government—

(i) to cause elections to be held to the district board so that its newly elected members may come into office on any date fixed by the Provincial Government, which may be different from the date of expiry of the term of the members previously holding office;

(ii) to advance or postpone the date fixed under clause (i) and fix instead another date;

(iii) to appoint for that district board a Special Officer to exercise the powers, discharge the duties and perform the functions of the district board and its president, during the interval between the date of expiry of the term of the members previously holding office and the date on which the newly elected members will come into office.

(2) Where a Special Officer has been appointed under sub-section (1), he shall exercise the powers specified in sub-section (3) of section 240 of the Madras Local Boards Act, 1920, and any such officer who is not a District Collector or Revenue Divisional Officer may, if the Provincial Government so direct, receive payment for his services from the district fund.'

"Here again, Sir, it is not purely a matter of form but it is also a matter of substance, and my amendment makes the position clear. Now, Sir, in sub-clause 1 (3), you find the words 'to appoint for that district board a Special Officer to exercise the powers, discharge the duties and perform the functions, etc.' What the functions of that Special Officer are, are not clear. It is merely stated that a Special Officer who can exercise the powers of the district board can be appointed. If you take the next clause you will find: 'Where a Special Officer has been appointed under sub-section (1), he shall exercise the powers specified in sub-section (3) of section 240 of the Madras Local Boards Act, 1920 In that section 240 of the Madras Local Boards Act, 1920, sub-section (3) says: 'The Special Officer shall exercise the powers, discharge the duties and perform the functions of the local boards until the board has been constituted and of the president of the board until a president has been elected by the board.' It is the same thing we are repeating in clause 3 (1) (iii) and repeating in sub-clause (2) what is stated in sub-clause (1) (iii). As a matter of fact, if only section 240 of the Madras Local Boards Act, 1920, had been read and studied, there would have been no need for section 3 at all to be put in this Bill, because section 240 of the Act makes special provision in the case of newly constituted and reconstituted local boards. Again, sub-clause (6) of section 240 of the Madras Local Boards Act, 1920, says: '(6) The provisions of sub-sections (1) to (5) shall apply save as otherwise provided in this Act and so far as may be, to all cases of reconstitution of local boards.' Therefore, Government had the power and have the power under section 240 of the Madras Local Boards Act, 1920, to appoint special officers and the special officer under sub-clause (3) and sub-clause (6) for the constituted or reconstituted local boards, can exercise powers, discharge the duties and perform the functions of the local boards, etc. Now, that is a mere repetition here. This House is supposed to take the collective responsibility of putting on the Statute Book a repetition of the Act.

"Secondly, a more serious objection to the section is the provision relating to what is stated in the clause, namely, 'It shall be lawful for the Provincial Government When an act

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is done which is unlawful, then it can be made lawful by the Legislature at any time. What the Government intend in introducing this Bill is not clear, because under section 13 of the Madras General Clauses Act, certain powers are given to them which they can exercise from time to time. Now what does this say? Under clause 2 (1) it only wants to take power to advance, postpone the date fixed under clause (i) and fixed instead another date. It only says that the newly elected members may come into office on any date fixed by the Government. There is no date fixed. I say this is bad drafting. The phraseology lawful for the Government is not correct. Then according to sub-clause (2) Government take power to appoint any person as special officer to discharge the functions of the district board, etc. They may even take more powers under that clause. The Government shall also have powers to the payment of remuneration to the special officer as the Government may fix. Then, the remuneration clause is this : 'and any officer who is not a district collector or revenue divisional officer may, if the Provincial Government so direct, receive payment for his services from the district fund.' Here, Government direct him to take payment, but he may or may not do it. This is bad drafting. Giving power to Government to appoint any person and taking the payment from district funds—that is what is required. But there is no provision in the section which says that Government shall have power to prescribe the manner and the date of election and the appointment of a person as special officer, payment to him of remuneration and investing him with such powers as the Government may think fit. Instead of fixing a pay or remuneration to be paid out of the district fund, we have a wrong section 3. This section by implication takes away the effect of section 13 of the Madras General Clauses Act. If they had simply left it there, they would have framed section 3 (1) (2) with reference to section 13 of the General Clauses Act to postpone the date of election and fix another date for the members for coming into office. Then what about the third date. What the Government want is power to conduct these elections in the manner best suited to the circumstances of a particular class and to extend it from time to time and they also want power to appoint a special officer though they have it under section 240 of the Local Boards Act. If they find any difficulty in regard to payment to the special officer under section 240, let them remove it and appoint him. Where is it stated in this Bill that Government can fix his pay. If the Government say, he may receive the pay, Government must also have the power to fix his pay. It is not there. The idea is, Government want to appoint as special officer any person other than a district collector or revenue divisional officer and to pay him from district funds after fixing his pay. Instead of a straight clause giving them all powers, they want to contravene the powers given to them under the General Clauses Act in the matter of fixing the pay. Therefore, I submit that it is not only a matter of mere form. Section 3 is clumsily worded and therefore, this House cannot take the responsibility of enacting this law and putting it on the Statute

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Book. We have a responsibility to see that the enactment is clearly worded and worded according to law. What the Government here want is power to do certain things. The Minister says that it has to go back to the Assembly without any questioning and therefore, I should not seek to amend it. If that is so, though the rules published for the guidance of this House should be deleted because though the rules provide that even if an Act comes from the Assembly and passed previously by the Assembly, still this House can make amendments. We are only trying to assist in a spirit of help in getting through legislation. The Hon. the Minister said that if this amendment had been before him before this clause was drafted, he might have accepted it. Is that a statement that an Hon. Minister can make? Why are we here for? Are we here to propose amendments when Bills come up and it is for the Minister to say, if I find it reasonable, I will accept it. For instance, they must give some reason why they should provide one date and then another date and not a third date. Why should they not bring up a more comprehensive measure to the effect that whenever they find any difficulty, they can do anything they like."

* SRI R. SURYANARAYANA RAO :—" I formally second it, Sir."

* SRI B. NARAYANASWAMI NAYUDU :—" Sir, I move the amendments that stand in my name :—

Clause 3 (1).

' The words " it shall be lawful for " shall be omitted.'

Clause 3 (1) (i).

' For the word " to " where it first occurs, the word " shall " be substituted.'

Clause 3 (1) (ii).

' For the word " to " the word " may " shall be substituted.'

Clause 3 (1) (iii).

' For the word " to " the word " may " shall be substituted.'

' After the words " Special Officer " the words, " for a period not exceeding one month " shall be inserted.'

Clause 3 (2).

' The following proviso shall be inserted :—

" Provided that the Special Officer shall have no powers to reconstitute polling areas."

' In line 3, for the word " any " the word " no " shall be substituted.'

' The words " who is not a District Collector or Revenue Divisional Officer " occurring in lines 3 and 4 shall be omitted.'

' In line 4, for the word " may ", the word " shall " be substituted.'

' The words " if the Provincial Government so direct " shall be omitted.'

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" Sir, the really difficult clause in this Bill is clause 3 relating to the extent and operation of its provisions. It is a question of taking away the elective principle which the Advisers' Government took away by superseding these boards. The present Government says, "We take away the nominated members" but does not say, they are going to put in elected members but on the other hand, they say, "We will put in special officers for a period which is not known." There is no indication as to how long this period of interregnum will continue. The power of nomination which was challenged is sought to be exercised by the very same people—now the popular Government. I question that. I cannot tolerate it. How long these special officers of district boards are going to continue in their office and what are the powers that they are going to exercise? After all, they are nominated persons. They can do anything they like, never mind they are put in charge only for the period of the interregnum. You do not want nomination; at the same time, you want to forego election by creating an interregnum. I ask what is the period of the interregnum. Is it to be one year, two years or what, and the Special Officer doing what, during this period? There are two central facts underlying my amendment. Even according to the existing provision, there is nothing to prevent election and this Bill is merely a repetition of the past legislation. What is the period for which this nomination is deliberately asked for? There is no time limit. Even though it is for a single board, we do not know how the Special Officer is going to function and for what period; is it for one, two or three months? That is not defined in the Bill."

* MR. PRESIDENT :—" The hon. Member may turn this side because the Press is not able to catch what the member is saying."

* SRI B. NARAYANASWAMI NAYUDU :—" Sir, the purpose of my amendment is twofold. As my hon. Friend pointed out, the phrase 'it shall be lawful for the Provincial Government' seems to me to be ridiculous. In section 3 it is stated that for reconstituting the boards members shall be elected. The first thing is, it is not a question of 'lawful' as if for the first time elections are given to us by this democratic Government. Election is all along there. The question really is, when are the elections going to be held? That is why I have put in the amendment to fix the period of limitation. Even supposing you appoint a special officer for the district boards, he should not be appointed for a period not exceeding one month. My hon. Friend will come up and say, do you know it is only for four or five months? All right, have it. What is the meaning of this amending Bill which is sought to be introduced in this House? Why are we here for? Do we expect us to pass this? The elective principle is the stronghold of any democracy. Is it elective principle to nominate a special officer without knowing what his duties are and how long he will be put in power? Therefore, I wish to limit the interregnum to a period of one month. Since a time limit is not fixed, it may extend to one, two or three years if you want."

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(The Hon. Mr. Daniel Thomas :—‘ All right. Put it three months. ’) That is exactly what I am asking you. Then again you want to pay the nominated officer a remuneration but that remuneration is not fixed. In view of all this, Sir, I consider this an ill-drafted measure.

“ My another amendment is ‘ No such officer shall receive payment for his service from the District Board Fund. ’ It is not merely a question of patronage. It is a question of how far we are going to administer the common law. Even though it is for a short duration of three months, cannot you get people to work for three months without any remuneration. It is stated in the Statement of Objects and Reasons that in order to prevent improper influence being exercised by the Presidents and Members of the District Boards, special officers are going to be nominated. After all, cannot these special officers use any improper influence, and, as already stated by my hon. Friend, Mr. Suryanarayana Rao, there are many honourable presidents of district boards who will not stoop to such methods. Therefore, the crux of the whole Bill is this, is nomination pure and simple, which is brought in under the guise of election; this is patronage pure and simple. Therefore, Sir, unless this provision with regard to time limit is accepted, this House shall not give its moral support to this Bill.”

* SRI RAO BAHADUR D. KRISHNAMURTHY :—“ I second it.”

* THE HON. MR. DANIEL THOMAS :—“ Mr. President, Sir, I oppose both these amendments but before I get into the details of these amendments, I would like to make my position clear. I am afraid the expression used by me has been misunderstood by some hon. Members of this House. I never meant it, and I will be the last person to deny the right of this House to make such amendments as they find necessary and expedient. My only submission in calling the attention of the House to the fact is that if amendments are made on non-essential matters and on mere matters of form or phraseology or wording, the consequence is that the Bill will have to go back to the Assembly again. I only wanted to mention this. I therefore ask that my statement should not be misunderstood.

“ Now, as regards the amendment moved by my hon. Friend, Dr. John, I would say that it is a question of form in the phraseology, or wording of the clause. The matters which are brought out in this clause are specifically set out in brief whereas my hon. Friend, Mr. John, puts it in one particular form.

4-15 P.m. “ He is not correct when he says that the present clause is only a repetition of the provisions of section 240 (3) of the Madras Local Boards Act of 1920. What is generally set out in section 240 (3) is specifically stated in sub-clause (2) and the one is complementary to the other and there is no question of repetition.

“ My hon. Friend also mentioned the provisions of section 13 of the General Clauses Act and said that if power were once given to the Government to do a certain thing, they can exercise that

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power and discharge their duty pursuant thereto from time to time. The power given to Government to do a particular act also involves power to repeat that act on future occasions. In respect of elections, power is taken by the Government according to sub-clause (1) (i) and (ii) and they are more explicit and definite. We may fix a date and the original date may be altered subsequently for any reasonable necessity. The Government want only so much of powers as are necessary for the purposes of carrying out the provisions of the Bill. It is not necessary to take larger powers, though larger powers exist according to the Madras General Clauses Act. Government wish to delimit their authority to the necessities of the particular occasion. There does not seem to be any virtue in re-drafting this clause.

“ So far as payment to special officers are concerned, the hon. Member said definite limit must have been prescribed. It may be noted even at the outset that the funds from which payment is to be made are local board funds and that is why Government have taken powers to direct payment from the funds of the local board concerned, in case the special officers appointed are neither Collectors or Divisional Officers. If other persons are appointed the question of payment does arise. There is no ambiguity about it and it will be with reference to the responsibilities of the duty demanded of the special officer. There seems to be no valid objection against acceptance of that clause. In a matter like this, we shall have to consider whether there is anything radically or substantially necessary; so far as this clause is concerned, it is not, though various suggestions have been made for improving it. As the clause stands, it is clear enough and brings out the limit of powers necessary for the Government for the purposes of the Bill. This clause is very elaborate and clear. Special officers appointed for the purposes of the Act may not be highly learned in the law to know the provisions of the Madras General Clauses Act and the position has been made quite clear here.

“ My hon. Friend Mr. Narayanaswami Nayudu was speaking as if we were taking special powers which did not exist in the old Acts. In the Act of 1920, there is power to appoint special officers for the period of the interregnum. But according to Act XXIV of 1942, it was made compulsory that the new members should come into office on the very date on which the old members cease to function. We are only reverting to the old position, namely, that during the period of election, it is good and desirable that elections are free and there is no undue influence. Therefore, during that period special officers are to be appointed to carry on the normal duties of the local boards. If he is the Collector or the Divisional Officer, he need not be paid. If some other person is to be appointed and he is not to be paid, the charge will be made that he is a party man. Apprehensions have been expressed in certain quarters that some of them may not be absolutely impartial. I say, Sir, there is no question of partiality if the Collector or Divisional Officer is the special officer. If any other person is to be

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appointed, he becomes the paid servant of Government and, therefore, he may be expected to hold the scales even between the various parties. At any rate, there will be no reason or necessity or occasion to fear that he will not hold the scales even during the period of the election. It is only to allay apprehension in the minds of some people that the person appointed might be a party man, that no provision for honorary officers has been made. He is either a Collector or a Divisional Officer or if any other person is appointed, he is a paid officer of the Government. It is with the idea of putting the administration in the hands of responsible men that Government servants are appointed. We expect that they will hold the scales even. The arguments of my hon. Friend are not such as to take away in any way the validity of the provision of clause 3. I give the assurance that elections will be over before December this year; the schedule of dates is already being prepared for holding elections in November and December and the period for which special officers will be appointed will be less than three months. I assure my hon. Friend that he need not entertain any apprehensions that the Government will prolong the period of appointment of special officers for a indefinite period and thereby deny the electors of their right of vote to choose their representatives to the municipalities and district boards. We are anxious to restore elections. Otherwise, there is no need for amending the Act of 1942, which gives us ample powers to appoint our own men to carry on the local board administration. We have brought in this measure because we do not want to take advantage of the powers that vest in us by the Act of 1942, and we wish elections to be conducted as early as possible. I assure my hon. Friends that the fears expressed by them are unfounded and we are anxious to conclude the elections before December 1946."

* DR. V. K. JOHN :—" My objection, Mr. President, is that either we are having two inconsistent clauses or we are having a repetition. The duties of a special officer have been defined in section 240 (3) of the Local Boards Act of 1920 and it seems to have been re-stated in clause 3 (1) (iii) of the present measure. My point is that if they are consistent one with the other, it is a repetition. If they are not they must be inconsistent. Nobody can get out of it. I shall read section 240 (3) of the Local Boards Act, 1920.

'The special officer shall exercise the powers, discharge the duties and perform the functions of the local board until the board has been constituted and of the president of the board until a person has been elected by the board, and relevant portion of clause 3 (1) (iii) says:—

'exercise the powers, discharge the duties and perform the functions of the district board.'

" I do not see how the one is different from the other. Either it will be a repetition or it will be an inconsistency I cannot subscribe to it."

* THE HON. MR. DANIEL THOMAS :—" Clause 3 takes power for the appointment of special officers and for conducting the elections in the matter of dates and other arrangements. Sub-clause (3)

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relates to the powers which are to be given generally but clause 3 (1) (iii) relates to specific powers which can be exercised."

The amendments were put and declared lost and a poll was demanded.

The House divided thus—

Ayes 10; *Noes* 23.

Ayes.

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| 1 K. T. M. Ahmed Ibrahim Sahib Bahadur. | 6 Hamid Sultan Maricair Sahib Bahadur. |
| 2 Sri B. Narayanaswami Nayudu. | 7 Mr. K. O. Anthoni. |
| 3 Abdul Latif Farooki Sahib Bahadur. | 8 Sri D. Krishnamurthy. |
| 4 Dr. Syed Tajuddin Sahib Bahadur. | 9 Sri H. M. Jagannatham. |
| 5 Sri M. D. T. Kumaraswami Mudaliyar. | 10 Sri A. R. L. Pathy. |

Noes.

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| 1 Sri B. Bheema Rao. | 13 Sri A. Govindachari. |
| 2 Sri K. Madhava Menon. | 14 Sri C. Perumalaswami Reddiyar. |
| 3 Sri S. K. Satagopa Mudaliar. | 15 Sri O. P. Ramaswami Reddiyar. |
| 4 Sri N. Sankara Reddi. | 16 Sri S. Jayaram Reddiyar. |
| 5 Sri N. Venkatachalamji. | 17 Mrs. M. Hensman. |
| 6 Sri C. N. Muthuranga Mudaliyar. | 18 Mrs. M. N. Clubwala. |
| 7 Dr. U. Rama Rao. | 19 Sri R. Suryanarayana Rao. |
| 8 Sri M. Narayana Menon. | 20 Lieut.-Col. K. R. K. Ayyangar. |
| 9 Sri K. Natarajan. | 21 Sri C. Veerabhadra Rao. |
| 10 Sri T. Purushotham. | 22 Sri N. Ranga Reddi. |
| 11 Sri N. Ramabhadra Raju. | 23 Sri G. Venkata Reddi. |
| 12 Sri M. Sudarsanam. | |

* MR. PRESIDENT :—" Ayes 10; Noes 23; the Noes have it. The amendments are lost."

Clause 3 was put and carried.

Clause 4.

* DR. V. K. JOHN :—" Mr. President, Sir, clause 4, as it stands, is—

'If any difficulty arises in giving effect to the provisions of this Act, or of the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942, as amended by this Act, the Provincial Government, as occasion may arise, by order do anything which appears to them necessary for the purpose of removing the difficulty.'

"My amendment, Sir, is—

'Government shall have power to make rules not inconsistent with the provisions of this Act, for the purpose of carrying into effect the provisions of this Act.'

"I take very serious objection to enacting clause 4 in the Act as it stands. I do not want to criticize the language; it says 'as occasion may arise'; it does not say 'occasion arises.' There are two serious objections to this Statute. The first is, it ropes in the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, and the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942. What justification there is for Government to attract these three Acts. What difficulties have arisen. The House has not been taken into confidence. We are not told whether any difficulty has arisen at all.

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We have not heard of any difficulty in carrying out the provisions of the Acts of 1920. Nevertheless, the Government wants now to pass a bill which attracts these two Acts, and they say "We want power not to frame rules which we have got, but power to do anything we like whenever we feel difficulty may arise." Democracy must always keep a nice balance between the three branches of the State, namely, the executive, the legislature and the judiciary. It is then that we have a democracy. If every power is taken by the executive and the executive is grabbing at everything, there is an end of democracy. Now the Legislature is supreme, and it is the elementary principle of constitutional law wherever there is any democratic form of government. What does Government want? The Government want to do anything whenever they feel any difficulty in carrying out the provisions of the two Acts of 1920 and the Act of 1942. Perhaps the real intention of this Act is to enact clause 4 and not to take power to appoint Special Officers which they have under section 240 of the Madras Local Boards Act, 1920. It is ununderstandable why in this Act—which the Hon. Minister says is only transitory in character although he does not fix the date—Government should seek power to do anything to remove any difficulty arising in giving effect to the provisions of the District Municipalities Act, 1920, and the Madras Local Boards Act, 1920. Is it not enough for them to take power to do anything they like if any difficulty arises in giving effect to the provisions of this Act? I can understand that the Act is so badly worded that many difficulties are likely to arise. They could take power to make rules or do anything as far as this Act is concerned. But why attract the provisions in these two older Acts. Yesterday when this question was raised in the general discussion, the Hon. Minister was saying that he is only concerned with the administration of the provisions of this Act. If that be so, I do not know why they have put the word 'or' the District Municipalities Act, or If the idea is not only to banish foreign government but also banish foreign language by misusing the language, then they are perfectly free to do it if it is not the intention. I do not understand why they should use the word 'or.' If the intention of the Minister is that the words 'as amended by this Act' should qualify the other two Acts also, he should use proper language. When they do an act, who can question it? We are allowing them to do anything they like if, in their opinion, any difficulty arises. I say, Sir, this is putting the thin end of the wedge to destroy the legislature and the powers vested in it. This is not democracy. I suggest that they frame any number of rules to carry into effect the provisions of this Act, and in the rules they can provide anything they like from time to time. These rules have to be consistent with the provisions of the Act, as they may go before a court of law or may be criticized and may be placed on the Table of this House. To give them the power to do anything they like not only to carry out the provisions of this Act, but also to carry out the provisions of the two main Acts is going too far and the legislature is only invited to abdicate its powers."

4-45
p.m.

Mr. R. W. Theobald seconded the amendment.

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* K. T. M. AHMED IBRAHIM SAHIB BAHADUR :—" Mr. President, Sir, I move the amendments standing in my name—

(1) *In clause 4 the words, " or of the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942, as amended by this Act " shall be omitted.*

(2) *In clause 4, for the words " do anything which appears to them necessary " the words " do whatever is necessary " shall be substituted.'*

" The reasons for these amendments I have already explained yesterday. The only power which any government should take while legislating for any purpose shall be the rule-making powers. If the Hon. Minister is not prepared to content himself with the rule-making power conferred by Dr. John's amendment, my amendment goes a step further and I suggest therefore that the Government do accept my amendment which gives them power to do anything they like so far as the carrying out the provisions of this particular Act is concerned. But the clause as it now stands gives to Government full power to do anything they like not only in regard to the provisions of this Act but also the provisions of the two main Acts. It is unfortunate that such an important clause which arms the Government with power to do anything they like with regard to the two main Acts which have been on the Statute Book for more than 26 years has been brought in, in a subordinate manner while taking power to carry out the provisions of this simple Act. It is after all a transitory measure. That is why I move that clause 4 may be redrafted as follows: ' If any difficulty arises in giving effect to the provisions of this Act . . . the Government may, as occasion may arise, by order *do whatever is necessary* for the purpose of removing the difficulty.' Coming to the second part of my amendment. For what the Government think necessary in a particular case there may not be actually any reasonable necessity at all, but under the Bill, as it is, if they appear to them to be necessary, they can do what they like. As I said, there may not be any reasonable necessity at all for doing the particular Act. Still they can do it. That is why I want the clause to be redrafted as suggested above, so that both the amendments the Hon. Minister will concede as reasonable. If my amendments are accepted, he will have the maximum power to carry out the provisions of this Act without causing an invasion on the provisions of the two main Acts. Therefore these are very reasonable amendments which, while giving power to the Government to carry out the provisions of this Act, would not give them power to do anything they like under the provisions of the main Acts."

Hamid Sultan Marakkayar Sahib Bahadur seconded the amendments.

* SRI R. SURYANARAYANA RAO :—" I rise to support the amendments of Mr. Ahmed Ibrahim for two reasons. Yesterday

[Sri R. Suryanarayana Rao] [10th September 1946]

when I raised this question in the general discussion of the Bill, the Hon. Minister for Local Administration quoted the Acts of 1937 and 1938 passed in the Assembly and the Council and said that he was merely copying as it were the sections of those Acts. First of all, I do not think he should take the Acts passed in 1937 and 1938 as a guide. However he could have been content, as his hon. Colleague is in another Bill that may be coming up shortly. If any difficulty arises in giving effect to the provisions of this Act, the Provincial Government, as our friend suggested, may whenever it seems necessary by order do anything which appears to them necessary for the purpose of removing the difficulties. If he had merely reproduced the section which the Hon. Mr. Karanth has put in, in the Bill that will be coming up shortly, nobody would have raised any objection. Yesterday the Hon. Minister for Local Administration tried to answer me saying: it is only mere drafting, and nothing more is meant by it. I am not satisfied with the explanation. It is much more than mere drafting in introducing the Acts of 1920 in this connection. So I support the amendments of Mr. Ahmed Ibrahim."

* DR. V. K. JOHN :—" If these amendments are accepted, I withdraw my amendment to clause 4."

* THE HON. MR. DANIEL THOMAS :—" Mr. President, Sir, I am sorry I have to oppose both the amendments. As regards the amendment of my hon. Friend Mr. John, he asks: what is the difficulty? Why not you take us into confidence and let us know what the difficulty is. If we know what the difficulty is, we are sure to take the House into confidence. We are providing for difficulties in the future unforeseen and unforeseeable at present.

" Then it has been asked: why are you not satisfied with rule-making powers? Why do you want an 'order'? There are different classes of Acts. For example, there is the Madras District Municipalities Act under which licences are issued for cinemas. Under it, rules are authorized to be made for regulating the grant of licences. The licence shall be granted on payment of certain fee; the application should be in a certain form and it should be put in at a particular time, and the licence shall last for a particular period and so on and so forth. Here it is not a question of framing rules. No rules are necessary. Because we are holding election in November and December if any difficulty arises some orders may be passed by us to lead us out of the difficulty. This is not a case at all for framing rules. When we ask for power to make an order, it is no use saying: " You had better frame rules." Rules are not necessary. They would not be apposite at all. No rules need be framed under this Act. And therefore it is that we did not ask for rule-making power. If any difficulty arises, we ask for power to get over the difficulty by an order. My Hon. Friend Mr. Karanth's Bill was referred to. There also the purport is the same though the phrasing or wording may differ. The Government may do anything is one wording. Government may by order do anything is another. The words ' by order ' are not there. It does not make any difference. If the Government does anything it will

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do that by an order. Therefore I see no difference between the provision in my Hon. Friend's Bill and the provision as it stands in my Bill. Then it was asked both by Mr. John and Mr. Ibrahim : why bring in the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, and the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942. You will see that the words are ' If any difficulty arises in giving effect to the provisions of this Act, or of the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, or the Madras City Municipal, District Municipalities and Local Boards (Second Amendment) Act, 1942, *as amended by this Act* . . . ' If any difficulty is created by the present amending Act with reference to any of those Acts, that difficulty may be obviated by an order of Government. You will see that in the District Municipalities Act and the Local Boards Act, there are certain statutory provisions relating to the holding of elections. For example, it is said that the term of office of members shall be three years, that their term of office shall expire on the 1st November, that on the 1st November elections should be held, and so on and so forth. If this present Act creates any difficulty in regard to the provisions of those Acts, the Government may do anything just necessary to obviate it. My hon. Friend Mr. Ahmed Ibrahim asked : why ' appears to them necessary,' why not ' is necessary.' It is considered ' necessary ' by whom? By the Government? In this modest Bill, instead of saying ' which is necessary,' we have said : ' if it appears to the Government necessary.' It is only a question of wording. It does not really go into the root of the matter.

" My hon. Friend Mr. Suryanarayana Rao said that there are a series of enactments, Act IX of 1937, Act II of 1938 and such similar Acts. I may also say that the Mother of Parliaments has given still larger powers in their Statutes. I may here refer to the Poor Law Act of 1930 as enacted by the British Legislature. You will see what larger powers are given under this Act, than what we ask for in this modest measure. Under the Poor Law Act of 1930, the Minister shall make such rules, orders and regulations as he may think fit for the management of the poor. Then there is the Local Government Act of 1929 which empowers the Secretary of State to make by order any adaptations or modifications of the provisions of any Act necessary to bring those provisions into conformity with the provisions of this Act. To give effect to the provisions of that particular Act, he can modify the provisions of *any Act*. As instances of the delegation of power to modify the Act conferring the power, nine Acts passed between the years 1888 and 1929 may be cited, the power being conferred for the purpose of facilitating the bringing of the Act into operation, to remove difficulties or remedy defects in conditions subsisting at initiation of the new legislation. If any difficulties are found to exist, we have to remove them and that is what is done under this Act. The provisions in the present Bill are more modest than the powers given to Government in the

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various Acts passed by the British Parliament. I would therefore submit that clause 4 may be retained as it now stands, and that it may be accepted by this House."

The amendment of Dr. V. K. John was put and lost.

The two amendments of Mr. K. T. M. Ahmed Ibrahim were put and lost.

Clause 4 was put and carried.

Clause 1.

* DR. V. K. JOHN :—" I only said that there may be a clause as in every Bill, as to when it will come into force. The Hon. the Minister said that the General Clauses Act will apply. Therefore I withdraw my amendment."

Clause 1 was put and carried.

The preamble was put and carried.

* THE HON. MR. DANIEL THOMAS :—" I beg to move that the Bill be passed into law."

The motion was put and carried.

IV.—MOTION FOR SUSPENSION OF RULE 17 OF THE MADRAS
LEGISLATIVE COUNCIL RULES.

THE HON. SRI T. PRAKASAM :—" I move the motion standing in the name of the Hon. Sri Veeraswami.

" I move—

'that rule 17 of the Madras Legislative Council Rules be suspended and the House do resolve to transact Government business on Wednesday, the 11th September 1946.' "

* K. T. M. AHMED IBRAHIM SAHIB BAHADUR :—" I would like to point out that Ministers who are not members of this House cannot take part. Yesterday, a ruling was given with regard to making motions by Ministers who are not Ministers of the House."

* MR. PRESIDENT :—" No, not in such a restricted form. The question was whether Ministers, who were not members of this House, can do anything other than merely speak. The ruling was that except voting they can do everything else in this House."

* ABDUL LATIF FAROOKHI SAHIB BAHADUR :—" Mr. President, Sir, I rise to oppose the motion moved by the Hon. the Premier. I feel, Sir, that rule 17 gives a privilege to the non-official members to move resolutions and Bills. It is only once a week that this privilege is given to non-official members. On all other days, the Government have got the right to transact their own business. If even that privilege is taken away from the non-